



Arkansas
Secretary
Of State

Charlie
Daniels

The Arkansas Register



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TABLE OF CONTENTS

ATTORNEY GENERAL

Opinions 4

RULES AND REGULATIONS 8

INSURANCE DEPARTMENT

Orders11

LEGISLATIVE AUDIT

Orders16

**Charlie Daniels
Secretary of State
State Capitol, Room 026
Little Rock, AR 72201-1094**

Editor Jon Davidson

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Charlie Daniels***

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THE ARKANSAS REGISTER

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ATTORNEY GENERAL OPINIONS

Opinion No.: 2002-322

Davis, Brent
Pros Att'y, 2nd Judicial District

RE:Are federal land banks exempt from Arkansas personal property tax as to the furniture, fixtures, and equipment owned by them and located within the local office? **RESPONSE:** Yes. As federal instrumentalities, land banks are immune from state and local taxation pursuant to the Supremacy Clause, U.S. Const. art. VI, cl.2, unless Congress expressly waives that immunity. Although Congress has waived the tax immunity of federal land banks with respect to real property taxes, 12 U.S.C. § 2098, it has not done so with respect to personal property taxes of the sort referenced in your request.

Opinion No.:2002-324

Gullett, Brenda
State Senator

RE:Is there a statute of limitations on how far back a local pension and relief fund can go back and request that monies enumerated under ACA 24-11-413 and 24-11-415 be added to their local fund? **RESPONSE:** Arkansas law does not explicitly answer this question. I recommend an approach that is a blend of elements from the approaches used by other states: Apply the "catch-all" statute of limitations to mandamus actions to enforce private rights, but do not apply a statute of limitations to mandamus actions to enforce public rights, where public officers have a "continuing duty." Under this approach, there would be no statute of limitations on a mandamus action to recover monies that should, legally, have been added to a local pension fund. The defense of laches may apply, however.

Opinion No.:2002-327

Broadway, Shane
State Representative

RE:Is it a violation of ACA 14-14-102(a) and ©(1)(A) for a member of the county quorum court to perform dirt work for a new county library building if the quorum court member is the owner of the company that is performing the work as a subcontractor under a bid to the general contractor? Q2) If the answer to Q1 is "yes," can the quorum court member complete the dirt work if he resigns his office? **RESPONSE:** Q1) Absent quorum-court approval based upon "unusual circumstances," I believe it would constitute a clear conflict of interests for a quorum court member to perform contractual services for the county, even if he performs those services indirectly as a subcontractor. Q2) Assuming the conflict of interests existed at the time the contract was formed, I believe the quorum court member could not avoid the conflict by resigning. The impropriety underlying any such contract flows from a presumption that the interests of the county either have been or impermissibly appear to have been subordinated to the interests of a county official. In my opinion, for the official to resign only to continue benefiting from an improperly negotiated contract would not cure the impropriety.

Opinion No.:2002-333

House, Don R.
State Representative

RE:Were the Arkansas trucking businesses that chose to register their equipment in Oklahoma through a third-party agent or other method, lawfully registered in Oklahoma until the April 12, 2002 Oklahoma district court decision that allowed Oklahoma to begin to

ATTORNEY GENERAL OPINIONS

enforce its amended rules? Q2) Are the registrations of Arkansas trucking businesses that chose to register their equipment in Oklahoma through a third-party agent or other method valid until they expire? RESPONSE: I must respectfully decline to answer these questions, since (1) answering each would involve conducting a factual inquiry I am unauthorized and unequipped to undertake; (2) although my statutory charge is to advise legislators and other designated officials on the application of Arkansas law, your questions appear to implicate only the application of Oklahoma law, as possibly qualified by federal law and industry regulations; and (3) as a matter of policy, this executive office avoids rendering opinions on matters that have been submitted for judicial resolution, as your questions appear to have been in Oklahoma.

Opinion No.:2002-334

Dodson, Mac
President, AR Dev. Finance

RE:What is the impact on Amendment 60 of the Arkansas Constitution of the Federal Reserve's recent final amendments to Regulation A? What is the propriety of utilizing the new primary rate as opposed to the secondary rate as a replacement for the "Federal Reserve Discount Rate" that is referenced in Amendment 60? RESPONSE: Pending resolution of this issue through amendment to the constitution or interpretation by a court, it is my opinion that the approach most consistent with Arkansas precedent and the intent and purpose of Amendment 60 is to use the new "primary credit" rate in calculating the usury limit under Am. 60.

Opinion No.:2002-335

Emigh, Barry

RE:Request for certification of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, empowering the General Assembly to operate lotteries and pass legislation without assembly, authorizing for-profit gambling as specified, and for other purposes. RESPONSE: Popular name and ballot title rejected due to an ambiguity in the text of the proposed measure.

Opinion No.:2002-336

Greathouse, G. Wayne
Interim Exec Dir, ATRS

RE:Can the language in ACA 24-1-106 be applied to prevent the granting of a routine cost of living adjustment ("cola") pursuant to ACA 24-7-713 in a case where the Arkansas Teacher Retirement System's amortization period is over 30 years? RESPONSE: In all likelihood "no," ACA 24-1-106 does not prevent the granting of the "cola." Legislative clarification would be beneficial on the question however.

Opinion No.:2002-337

Mobley, Max
Secretary, Sex Offender

RE:Is the attached proposed procedure for determining who is a sexually violent predator and amendment to ACA 12-12-918 in violation of the 8th

ATTORNEY GENERAL OPINIONS

Amendment to the U.S. Constitution or any other federal or state statute? RESPONSE: The proposed amendment does not violate the 8th Amendment (or Article 2, 9 of the Ark. Const.), but does raise due process and separation of powers concerns, because it removes the possibility of judicial review.

Opinion No.:2002-344

Bracey, John M.

RE:Is the decision of the custodian of records not to release copies of witness statements and correspondence generated during the investigation that resulted in a written reprimand for a city employee consistent with provisions of the Freedom of Information Act (FOIA)? RESPONSE: The employee (or her designated represented) is entitled to receive her own records. However, since they may also constitute the personnel records of other employees the question of whether those employees' names should be redacted must be evaluated under the "clearly unwarranted" standard. In addition, any other exempt or constitutionally protected information about other individuals should be redacted.

Opinion No.:2002-345

Buttry, James A.

Friday Eldredge & Clark

RE:Request for approval of interlocal agreement for construction and operation of power plant between Stilwell Area Development Authority, Stilwell, Oklahoma and Independence County, Arkansas. RESPONSE: Approved as submitted.

Opinion No.:2002-346

Emigh, Barry

RE:Request for certification of popular name and ballot title of proposed constitutional amendment authorizing bingo and raffles by nonprofit organizations, empowering the General Assembly to operate lotteries and pass legislation without the benefit of assembly, authorize for-profit gambling as specified therein, and other purposes. RESPONSE: Popular name and ballot title rejected due to ambiguities in the text of the proposed measure.

Opinion No.:2002-347

Eason, John A.

State Representative

RE:Is it a conflict of interest for an attorney to serve in the Marianna City Attorney's office, where he prosecutes criminal cases for the city, and simultaneously serve in the First Judicial District Public Defender's Office, which represents many of those defendants? RESPONSE: I must respectfully decline to answer your question, which apparently seeks to clarify your constituent's legal status in a matter that my inquiries reveal is still pending in the judicial system. As a matter of policy, this executive office has long avoided opining on matters that are the subject of pending litigation. I am likewise unable to provide a blanket answer to the general question of whether a public defender may represent a client in a criminal action prosecuted by the public defender's private law partner. I will merely note that the court, subject to the approval of the Arkansas Public Defender Commission, see A.C.A. § 16-87-203(a)(6) (Supp. 2001), currently has the discretion to disqualify a public defender based on a factual determination that he faces a conflict of interests. A.C.A. § 16-87-

ATTORNEY GENERAL OPINIONS

307(a) (Supp. 2001). For the reasons stated above, I am disinclined to second-guess the recent disposition of this issue by two circuit court judges.

Opinion No.:2002-348

Bisbee, David
State Senator

RE:Can the Arkansas State Board of Chiropractic Examiners penalize a licensee of the Arkansas State Board of Physical Therapy for practicing chiropractic without a license when the Arkansas State Board of Physical Therapy has certified that the particular procedure at issue falls within the scope of practice of physical therapy? **RESPONSE:** The AG cannot answer this question because it raises issues that are the subject of currently pending litigation.

Opinion No.:2002-349

Langguth, Gerhard
c/o ALERT

RE:Request for certification of popular name and ballot title of proposed constitutional amendment to abolish taxes on food and for other purposes. **RESPONSE:** Rejected due to ambiguities in the text of the proposed measure.

Opinion No.:2002-351

Bennett, Russell
State Representative

RE:Since the Lafayette County Collector's Office has been moved under the jurisdiction of the County Treasurer, is the County required to give the Treasurer a \$1,392 raise for assuming responsibility of the Collector's Office? **RESPONSE:** No, not if, as suggested, the treasurer-collector salary falls within the established minimum and maximum stated in ACA 14-14-1204 as those figures have been increased \$1,392 under subsection (i)(1)(B). The statute does not entitle the treasurer-collector to a raise, it merely increases the range within which the quorum court sets the salary. If the salary already falls within the enhanced range, the quorum court is not required to change or increase the salary.

Opinion No.:2003-001

King, Barbara
State Representative

RE:May the City of Lexa legally assign a police officer as a resource officer at the Barton-Lexa School campus, which is located in the unincorporated community of Barton in Phillips County? **RESPONSE:** No. An incorporated town may not assign an on-duty police officer to serve as a school resource officer, presumably to perform law-enforcement duties, in a school located outside the town's geographical limits. However, I believe an on-duty Phillips County deputy sheriff might serve as the school's resource officer so long as his or her duties involved only traditional police functions.

ADOPTED RULES AND REGULATIONS

DEPARTMENT OF COMMERCE

State Plant Board

Docket No.: 003.11.03--001
Effective Date: 1/6/03
Contact Person: Mike Thompson
Telephone: (501) 225-1598

**Emergency Rule: Pesticide
Classification Regulation**

GAME & FISH COMMISSION

Docket No.: 002.00.02--012
Effective Date: 12/28/02
Contact Person: James Goodhart
Telephone: (501) 223-6327

**2002-2003 Miscellaneous Code
Proposals, including Wildlife Hunting
Regulations**

HEALTH SERVICES AGENCY

Docket No.: 049.00.02--006
Effective Date: 12/26/02
Contact Person: Mary Brizzi
Telephone: (501) 661-2501

**Nursing Home Bed Need Methodology
Health Services Permit Agency
Regulation 100M**

HUMAN SERVICES

Children & Family Services

Docket No.: 016.15.03--001
Effective Date: 1/24/03
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

Annual Progress and Service Report

County Operations

Docket No.: 016.20.02--023
Effective Date: 1/9/03
Contact Person: Linda Greer
Telephone: (501) 682-8257

**FSC 03-01: Food Stamp Program -
Exclusion of Educational Income**

Docket No.: 016.20.02--024
Effective Date: 1/9/03
Contact Person: Linda Greer
Telephone: (501) 682-8257

**FSC 03-02 & IMF 02-11 - Application
Forms**

Medical Service

Docket No.: 016.06.02--047
Effective Date: 1/6/03
Contact Person: Vivian Jackson
Telephone: (501) 682-1577

ADOPTED RULES AND REGULATIONS

Minimum Direct Care Staffing Requirements -- To implement the second tier of minimum staffing requirements for nursing facilities in Arkansas under ACA 20-10-1403(b)

Docket No.: 016.06.02--048
Effective Date: 1/1/03
Contact Person: Will Taylor
Telephone: (501) 682-8362

Arkansas Medicaid Provider Manual -- Assisted Living Provider Manual

Docket No.: 016.06.02--049
Effective Date: 2/1/03
Contact Person: Nikki Wade
Telephone: (501) 682-8859

Alternative Community Services (ACS) Waiver Provider Manual Update #39

Docket No.: 016.06.02--050
Effective Date: 1/6/03
Contact Person: Joie Wallis
Telephone: (501) 682-5424

Official Notice DMS-2002-II-6, DMS-2002-L-10, DMS-2002-SS-3, DMS-2002-Q-7, DMS-2002-R-13, DMS-2002-K-2, DMS-2002-OO-6 and Arkansas State Plan Transmittal #2002-014 -- adding the Tuberculosis Medicaid Aid Category

Docket No.: 016.06.02--051
Effective Date: 2/1/03
Contact Person: Suzette Bridges
Telephone: (501) 682-4122

Official Notice DMS-2002-O-9, DMS-2002-E-7, DMS-2002-II-7, DMS-2002-KK-17, DMS-2002-Q-2, DMS-2002-R-21, DMS-2002-OO-7 -- Prescription Drug Prior Authorization

Docket No.: 016.06.03--001
Effective Date: 1/24/03
Contact Person: Joie Wallis
Telephone: (501) 682-5424

State Plan Transmittal #2002-021 -- Attachment 2.2-A

Docket No.: 016.06.03--002
Effective Date: 1/24/03
Contact Person: Carolyn Bradley
Telephone: (501) 682-8577

State Plan Transmittal #2002-020 -- Attachment 4.19-B

Docket No.: 016.06.03--003
Effective Date: 1/24/03
Contact Person: Carolyn Patrick
Telephone: (501) 682-8359

State Plan Transmittal #2002-023 -- Attachment 2.6-A; Official Notice DMS-2002-W-7 -- Income Limit Increase for ARSenior Medicaid Program

ADOPTED RULES AND REGULATIONS

PARKS & TOURISM

Keep Arkansas Beautiful Office

Docket No.: 013.09.02--001
Effective Date: 12/28/02
Contact Person: Robert Phelps
Telephone: (501) 682-3507

Guideline for Keep Arkansas Beautiful Grants

Docket No.: 013.09.02--002
Effective Date: 12/28/02
Contact Person: Robert Phelps
Telephone: (501) 682-3507

Membership Criteria for Keep Arkansas Beautiful Affiliates

POLLUTION CONTROL & ECOLOGY

Water Pollution Control

Docket No.: 014.04.03--001
Effective Date: 1/20/03
Contact Person: Jennifer Tucker
Telephone: (501) 682-0883

Regulation No. 3 -- Licensing of Wastewater Treatment Plant Operators



INSURANCE DEPARTMENT

02-072A

(Cease and Desist Order)

In the Matter of the

Illegal Insurance Activities of

**TRG MArketing, LLC; TRG Administration, LLC;
Paul Crouse, Carmelo Zanfei; the Redwood Group**

02-079A

(Continuing Cease and Desist Order)

In the Matter of the

Arkansas Activities of

AMS Staff Leasing, NA, Inc. and Charles Wood, Jr.

02-079B

(Continuing Cease and Desist Order)

In the Matter of the

Arkansas Activities of

AMS Staff Leasing, NA, Inc. and Charles David Wood, Jr.

02-084

(Order)

In the Matter of

Dubisson Funeral Home

02-085

(Order of Suspension)

In the Matter of the Certificate of Authority of

London Pacific Life & Annuity Company

02-086

(Cease and Desist Order)

In the Matter of the Illegal Insurance Activities of

Nancy Kelly, Michael Kelly, and the Kelly Agency

02-088

(Order to Show Cause)

In the Matter of

Rumph-Owers Funeral Homes, Inc.

02-089

(Order of Continued Suspension)

In the Matter of the Certificate of Authority of

First Citizens Life Insurance Company

INSURANCE DEPARTMENT

02-090

(Order of Continued Suspension)

In the Matter of the Certificate of Authority of
**Mid-Continent Life Insurance Company, Now Known
As Mid-Continent Preferred Life Insurance Company**

02-091

(Consent Order)

In the Matter of
Ricky Lynn Lumpkin

02-092

(Order of Suspension)

In the Matter of the Certificate of Authority of
South Carolina Insurance Company

02-093

(Order of Cancellation)

In the Matter of the Certificate of Authority of
**Commercial Truckers Risk Retention Group Captive
Insurance Company, a South Carolina Insurer**

02-094

(Order of Continued Suspension)

In the Matter of the Certificate of Authority of
North American Lumber Insurance Company

02-095

(Order of Continued Suspension)

In the Matter of the Certificate of Authority of
Lumber Mutual Insurance Company

02-096

(Order)

In the Matter of
Antonerio L. Nichols

02-097

(Final Cease and Desist Order)

In the Matter of the Illegal Insurance Activities of
Nancy Kelly, Michael Kelly, and the Kelly Agency

02-097A

(Order for Rehearing)

In the Matter of the Illegal Insurance Activities of
Nancy Kelly, Michael Kelly, and the Kelly Agency

INSURANCE DEPARTMENT

02-098

(Order)

In the Matter of
Orson Weems

02-099

(Order Revoking License)

In the Matter of
Douglas Alan Price

02-100

(Order)

In the Matter of
Randal Marvin Crossland, Jr.

02-102

(Adoption Order)

In the Matter of the Report of Examination of
1st Financial Assurance Company

02-103

(Adoption Order)

In the Matter of the Report of Examination of
American Home Life Insurance Company

02-104

(Order)

In the Matter of the Report of Examination of
Aviation Title Insurance Company

02-105

(Order of Continued Suspension)

In the Matter of the Certificate of Authority of
American Bonding Company

02-106

(Adoption Order)

In the Matter of the Report of Examination of
Higgibotham Burial Insurance Company

02-107

(Adoption Order)

In the Matter of the Report of Examination of
American Underwriters Insurance Company

INSURANCE DEPARTMENT

02-108

(Emergency License Suspension Order)

In the Matter of

Misty Michelle Akin

02-109

(Cease and Desist Order)

In the Matter of the Illegal Insurance Activities of

Custom Rail Employer Welfare Trust Fund, Medical Benefits

Administrators of Maryland, Inc., and Ronald J. Wilson

02-110

(Consent Order)

In the Matter of

Steven Dean Widener and American Aviation Insurance, Inc.

02-111

(Order)

In the Matter of the Application of

Southern Pioneer Life Insurance Company for Approval of

the Acquisition of Control of First Oklahoma, Ltd.

02-112

(Consent Order)

In the Matter of

Metropolitan Life Insurance Company Settlement Agreement

02-113

(Cease and Desist Order)

In the Matter of the Illegal Insurance Activities of

International Union for the Natural Health, Complementary &

Alternative Medicine Professions; Natural Health Union;

Progressive Health Alliance; Preferred Benefit Group; Robert Belfield

02-114

(Order)

In the Matter of

Mark Prewett

02-115

(Emergency License Suspension Order)

In the Matter of

Isophene Wiley

02-116

(Order of Suspension)

In the Matter of the Certificate of Authority of

American Growers Insurance Company

INSURANCE DEPARTMENT

02-117

(Order)

In the Matter of the Application for
Approval of the Acquisition of
Fidelity Standard Life Insurance Company

02-118

(Emergency License Suspension Order)

In the Matter of

Kathryn Ann Hendrix

02-119

(Order)

In the Matter of

William Kyle Shimek



ORDERS AND NOTICES

LEGISLATIVE AUDIT December 2, 2002

Agency	Period Covered
Department of Arkansas State Police	6/30/01
Department of Finance and Administration	6/30/01
Arkansas State Board of Acupuncture and Related Techniques	6/30/01
Department of Finance and Administration - Disbursing Officer	6/30/01
Department of Finance and Administration - Revenue Division - Corporation Income Tax Section	6/30/02
Department of Finance and Administration - Revenue Division - Individual Income Tax Section	6/30/02
Arkansas State Building Services	6/30/01
Arkansas State Child Abuse and Neglect Prevention Board	6/30/01
Arkansas State Board of Chiropractic Examiners	6/30/01
Arkansas Corn and Grain Sorghum Promotion Board	6/30/01
Arkansas State Military Department	6/30/01
Arkansas Minority Health Commission	6/30/01
Arkansas State Board of Optometry	6/30/01
Arkansas State Board of Podiatric Medicine	6/30/01

ORDERS AND NOTICES

Arkansas Rice Research and Promotion Board	6/30/01
Soil and Water Conservation Commission	6/30/01
Arkansas Towing and Recovery Board	6/30/01
Department of Veterans Affairs	6/30/01
Arkansas Wheat Promotion Board	6/30/01
Arkansas Workforce Investment Board	6/30/01
Arkansas Children's Hospital (Private)	6/30/02
Community Counseling Services, Inc. (Private)	6/30/02
Counseling Associates, Inc. (Private)	6/30/02
Counseling Clinic, Inc. (Private)	6/30/02
Little Rock Community Mental Health Center, Inc. (Private)	6/30/02
Ozark Guidance Center, Inc. (Private)	6/30/02
Western Arkansas Counseling and Guidance Center, Inc. (Private)	6/30/02
State of Arkansas Safe Drinking Water Fund (Private)	6/30/02
University of Central Arkansas	6/30/02

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